



STATE OF CONNECTICUT – COUNTY OF TOLLAND  
INCORPORATED 1786

# TOWN OF ELLINGTON

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## **INLAND WETLANDS AGENCY REGULAR MEETING MINUTES NOVEMBER 18, 2019 7:00 PM TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT**

**PRESENT:** Chairman Ken Braga, Vice Chairman Ron Brown, Art Aube, Jean Burns, Steve Hoffman, and Hocine Baouche

**ABSENT:** Mike Swanson

### **STAFF**

**PRESENT:** John Colonese, Assistant Town Planner/Wetlands Enforcement Officer and Barbra Galovich, Recording Clerk

### **I. CALL TO ORDER:**

Chairman Ken Braga called the November 18, 2019 regular meeting of the Ellington Inland Wetlands Agency to order at 7:00 PM in the Town Hall Annex, 57 Main Street, Ellington, CT.

**II. PUBLIC COMMENTS (ON NON AGENDA ITEMS):** None

### **III. PUBLIC HEARING:**

1. IW201911 – David E. Oakes, owner/applicant, request for a permit to conduct regulated activity to cut and stump trees, grade, excavate, and fill to create a trail for personal use of motorized vehicles at 12 Westview Terrace, APN 029-021-0000.

Chairman Braga announced the Agency received a request to postpone the opening of the public hearing to the next meeting. Mr. Colonese stated a soil scientist contacted him and they are working on delineating the wetlands and watercourses at the site.

**MOVED (BURNS) SECONDED (AUBE) AND PASSED UNANIMOUSLY TO TABLE THE OPENING OF PUBLIC HEARING TO THE NEXT REGULAR MEETING ON DECEMBER 9, 2019, 7:00 PM, TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT, FOR IW201911.**

**IV. NEW BUSINESS:** None

### **IV. OLD BUSINESS:**

1. IW201709 – Richard W. Lee Estate, owner / Joseph Willis, Jr., applicant, for the excavation of topsoil, importation of clean fill, construction of a 17,000 SF greenhouse, and associated activity as permitted uses as of right on property located at the corner of Crystal Lake Road & Burbank Road, APN 128-041-0001.

Joseph Willis, Jr., 38 Crystal Lake Road, Ellington, CT was present to represent the request for an extension.

Chairman Braga noted the additional documents received by the Agency since the last meeting as follows: Email from Mr. Willis received 11-11-19; Advisory opinion from Commissioner Bryan Hurlburt of the CT Department of Agriculture dated 11-13-19; Letter from Mr. Willis dated 11-15-19; United Rentals rental reservation for an excavator dated 11-15-19.

Mr. Willis stated his intention is to get the project done. He said his letter dated 11-15-19 is a response to the advisory opinion from the CT Department of Agriculture dated 11-13-19. Mr. Willis proceeded to say the activity on the site is “as of right” and read a portion of the definition of “agriculture” per CT General Statutes 1-1(q). He noted the Agency allowed him to move forward in 2015, and in 2017 he was informed that the application had expired. Mr. Willis said he then reapplied in 2017 and was approved again “as of right”. On August 1, 2019 he sent notification to the Agency via the Planning Department prior to the expiration date of the 2017 approval. He feels that once an activity is deemed exempt it should always be exempt.

Derek Lee, 294 Tolland Stage Road, Tolland CT was also present. Mr. Lee said he is the son of Richard Lee, and he questioned if the matter is before the Agency due to a lack of progress with the project. Chairman Braga responded in the affirmative. Mr. Lee explained his father passed away in 2018 and at that time the family didn’t make the project at the property a priority. He said that his family put a pause on the project for some time, maybe a month or two, but he is not sure of the exact amount of time.

Chairman Braga spoke that based on the length of time this project has taken Mr. Willis, he feels he can’t support an extension to the use permitted as of right, and Mr. Willis should be required to apply for a permit to the Agency requesting to spread the piles of dirt on site.

John Colonese explained his understanding of the procedure the Agency should follow when re-reviewing any continuing permitted or nonregulated uses. Per Appendix D, once the determination is made, it is valid for 2 years. If the activity has not been completed within the 2 year time frame, a new determination must be made by the IWA (either pursuant to a request to extend the activity or a new request for determination). In essence, the IWA has the ability to re-review any continuing permitted or nonregulated use every 2 years and make a new and independent judgment at that time whether it still constitutes a permitted or nonregulated activity. When considering such a request, if circumstances have changed since the date of the initial determination, or if new facts or considerations have arisen, the IWA has the ability to evaluate those to make a determination of whether a permit is required or not. If the Agency feels that a portion of the activity requires a permit, they have the right to request an application for a permit for that portion. He advised the Agency to determine if the activity of depositing, grading and removing fill by itself should be considered farming.

Commissioner Baouche mentioned the advisory opinion from the Commissioner Bryan Hurlburt of the CT Department of Agriculture. He has concerns with the length of time the project is taking. Commissioner Baouche also has concerns with the tractor trailers being parked on the property. He is concerned about protecting the brook that runs through the parcel from the tractor trailer trucks driving on the parcel that may have oil or other liquid leaks.

Commissioner Burns stated that Mr. Willis wouldn't be before them had the Agency seen progress at the site. She has concerns with the lack of progress and noted the four year timeframe that the project has taken.

Commissioner Hoffman inquired about the history of farming on the parcel. Mr. Willis stated it was farmed until 2007 for crops of vegetables and hay. Mr. Willis stated he grew turnips this year. Commissioner Hoffman asked Mr. Lee about the long term outlook for the property. Mr. Lee stated at some point they would like to sell the property to Mr. Willis.

Commissioner Brown described his concerns with the lack of progress at the site by referencing the following meetings when Mr. Willis had indicated to the Agency that the spreading of the material would be completed: January 14, 2019; May 13, 2019; September 16, 2019; and October 21, 2019. Mr. Willis said he currently has a rental reservation from United Rentals in Bloomfield, CT. He plans to have the excavator on site beginning November 25<sup>th</sup> to spread the material.

Mr. Willis discussed how he plans to spread the material when he has the machine. Mr. Willis asked if he could remove any excess material from the site after the spreading is complete. The Agency agreed to allow Mr. Willis to remove the excess material from the site but not sell it from the site.

Commissioner Brown agreed with the opinion of the Commissioner of the CT Department of Agriculture and does not find a farming activity at this property.

Chairman Braga asked Mr. Willis to contact Mr. Colonese when the machine is on site.

After a brief discussion, the Agency agreed that a permit should be required for the grading of the material and the removal of excess fill should the spreading of material not be completed during the months of November and December as described by Mr. Willis. The Agency also decided to continue the request for the construction of the greenhouse to the next regular meeting.

**MOVED (AUBE) SECONDED (BURNS) AND PASSED UNANIMOUSLY TO DETERMINE THAT PURSUANT TO SECTION 4.5 OF THE ELLINGTON INLAND WETLANDS REGULATIONS A PERMIT IS REQUIRED FOR THE EXCAVATION OF TOPSOIL AND THE DEPOSITING, GRADING AND REMOVAL OF FILL WITHIN THE UPLAND REVIEW AREA ON PROPERTY LOCATED AT THE SOUTHEAST CORNER OF CRYSTAL LAKE ROAD & BURBANK ROAD, APN 128-041-0001 BASED ON THE FOLLOWING FINDINGS:**

- 1) Existing deposited materials within the upland review area at the subject property do not constitute farming pursuant to the Ellington Inland Wetlands Regulations.
- 2) Existing project site does not contain a greenhouse as proposed pursuant to the notifications accepted by the Agency on July 13, 2015 and September 18, 2017.
- 3) Advisory opinion from Commissioner Bryan Hurlburt of the CT Department of Agriculture dated 11-13-19 stating the subject property should not be considered a farm for the purposes of Conn. Gen. Stat. 1-1(q).

**APPLICATION MUST BE SUBMITTED TO THE INLAND WETLANDS AGENCY FOR A PERMIT BY THE CLOSE OF THE BUSINESS DAY PRIOR TO ITS JANUARY 13, 2020 REGULAR MEETING.**

**V. ADMINISTRATIVE BUSINESS:**

1. Approval of the October 21, 2019 Regular Meeting Minutes.

**MOVED (BAOUCHE) SECONDED (AUBE) AND PASSED UNANIMOUSLY TO APPROVE THE OCTOBER 21, 2019 MEETING MINUTES AS WRITTEN.**

2. Approval of 2020 IWA Meeting Schedule

**MOVED (BURNS) SECONDED (BAOUCHE) AND PASSED UNANIMOUSLY TO APPROVE THE 2020 IWA MEETING SCHEDULE AS WRITTEN.**

3. Correspondence/Discussion:

**VI. ADJOURNMENT:**

**MOVED (BROWN) SECONDED (BURNS) AND PASSED UNANIMOUSLY TO ADJOURN THE NOVEMBER 18, 2019 REGULAR MEETING OF THE INLAND WETLANDS AGENCY AT 8:22 PM.**

Respectfully submitted,

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Barbra Galovich, Recording Clerk